



***Topic: ACCOUNTING FOR BANKRUPTCY AND RECEIVERSHIP***  
**DAC 601: ADVANCED FINANCIAL ACCOUNTING**

*Submitted by*

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## **CHAPTER ONE**

### **BANKRUPTCY, LIQUIDATION AND WINDING UP**

#### **1.1 INTRODUCTION**

Bankruptcy is a key area of accounting. Guiding legislation on bankruptcy and winding up are enumerated in the Companies and Bankruptcy Acts. Winding up or liquidation is a process where the life of a company is brought to an end and the assets and property of the company administered for the benefit of the members and creditors.

To facilitate the winding up process, an administrator, referred to as the liquidator is appointed to take control of the company. He is charged with collecting its assets, paying debts and distributing any surplus among the members in accordance with their rights. A wound up company has no assets or liabilities. The process of dissolution then follows, where the company's name is struck off the register of the companies and its legal personality as a corporation comes to an end.

Winding up of a company may be **voluntary** (referred to as shareholder's liquidation), **compulsory** (referred to as creditor's liquidation) through the court or **subject to supervision** of the court. Bankruptcy is declared by a court after a petition has been filed and the High court has jurisdiction to wind up any company registered in Kenya.

A company may be dissolved under s.338 without winding up if the registrar has reasonable cause to believe it is defunct/ obsolete/ non operational

The company's act specifies the parties entitled to petition for compulsory liquidation as follows:

- Company
- Creditors
- Contributor
- Appointed receiver
- Government official

During liquidation, present and past members of the company are liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves. A contributor is a person liable to pay for the assets of a company in the event of its being wound up, and for the purposes of all proceedings for

determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

The parties to liquidation process are the **official receiver** appointed by the court who is expected to report on the amount of capital issued and paid up, the estimated amount of assets and liabilities, causes of the company failure, whether in his opinion further inquiry into the company affairs is necessary, whether in his opinion any fraud has been committed. Another party is the **liquidator** who conducts the proceedings in winding up a company and shall not be a body corporate. The court may appoint the official receiver to be the liquidator provisionally. The liquidator makes an application for an order that the company be dissolved.

## **1.2 ACTS OF BANKRUPTCY**

A bankrupt is a person against whom an **adjudication order** has been made by the court primarily on the grounds of his insolvency. A bankrupt can be any person (even an infant or person of unsound mind), other than a body corporate who:

- a) Has incurred **liquidated** debts of kshs 1,000 or more;
- b) Has committed an **act of bankruptcy** within the **three months** preceding presentation of the petition; and
- c) At the time the petition was presented was domiciled or within a year before, was ordinarily resident in Kenya or carrying on business in Kenya personally or by an agent or as a member of a firm.

The following are the acts of bankruptcy on which a petition may be founded:

- i) **Assignment of property to trustee**; whereby one gives up all his property to be managed by a trustee and it is for the benefit of the creditors generally.
- ii) **Fraudulent conveyance**; the debtor unfairly transfers his property to one creditor, so that the other creditors have no assets to attach their claims on.
- iii) **Fraudulent preference**; Where the preference constitutes a conveyance or transfer of property, or a charge thereon,
- iv) **Absenting**; departing or remaining out of Kenya, or departing from his dwelling-house, or otherwise absenting himself, or 'keeping house', with the intention of defeating or delaying his creditors.
- v) **Execution against goods**; this is committed when the bailiff has taken possession of goods and either sold them or retained them for 21 days.
- vi) **Non-compliance with bankruptcy notice**; A bankruptcy notice may be issued by a creditor in respect of a final judgment or order for any amount provided that execution has not been stayed or already levied: failure by the debtor to pay the amount of the judgment within seven days of service of the notice constitutes an act of bankruptcy, unless the debtor applies to have it set aside on the grounds of set off, etc.

### 1.3 DISCHARGE OF BANKRUPT

#### 1. Application of discharge

Application may be made at any time after adjudication, but cannot be heard until the conclusion of the public examination. Notice of the hearing must be given in the Kenya Gazette, and **14 days'** notice given to every creditor. The Official Receiver must report to the court on the bankrupt's conduct, and the bankrupt is entitled to a copy of this report at least **seven days** before the hearing.

The court may -

- 1. Grant an absolute and immediate discharge;
- 2. Refuse the application; or
- 3. Grant a suspended or conditional discharge;
- 4. In particular, the court may only grant a discharge suspended for a definite period or until at least Shs 50 per Shs 100 has been paid to all creditors, or a conditional discharge subject to

judgement being entered against the bankrupt for all or part of the unpaid balance of provable debts, if either -

- (a) The bankrupt has been convicted of a bankruptcy offence, or
- (b) Any of the "facts" set out on s.29 (3) have been proved against him; such "facts" include - assets less than Shs 50 per Shs 100 of unsecured liabilities; failing to keep proper books of account; knowingly trading when insolvent; gambling; extravagant living or neglect of business; frivolous litigation; previous bankruptcy, composition or scheme; fraud or fraudulent breach of trust.

## **2. Effect of discharge**

An order of discharge releases the bankrupt from all disabilities imposed by the bankruptcy (except those which apply for a fixed period after discharge - see paragraph. 6.6 (b) (g), and from all **provable** debts except:

- i) Debts due to the government for breach of a revenue statute, or on recognizance, unless the Treasury gives written consent to his release;
- ii) Debts incurred by fraud or fraudulent breach of trust;
- iii) Liability under a judgment for seduction, or under an affiliation order, or as a correspondent in a divorce action, unless the court otherwise orders. The order does not release him from liability to prosecution for bankruptcy offenses.

## **3. Revocation of discharge**

The court may revoke or vary the order of discharge in the event of the debtor's failure to assist as required in supplying information or in the realization of the estate.

## **1.4 THE TRUSTEE IN BANKRUPTCY**

### **a. Appointment of trustee**

The trustee is appointed:

- i) By the creditors by ordinary resolution, or
- ii) By the committee of inspection, if so resolved by the creditors, or
- iii) By the court if a trustee is not otherwise appointed within four weeks of the adjudication or within seven days of rejection of a composition or scheme.

A vacancy is filled in the same way, the court having power to appoint if the vacancy is not filled within **three weeks**. A trustee appointed by the court may be replaced by a new trustee appointed by the creditors or committee of inspection.

#### **b. Court objections**

The court may object to a trustee appointed by the creditors or committee of inspection on any of the following grounds:

- i) Appointment not made in good faith by a majority in value of creditors voting;
- ii) Person appointed not fit to act as trustee;
- iii) Trustee's relationship with bankrupt or a creditor makes it difficult for him to act impartially;
- iv) Misconduct or failure to render accounts or deal properly with unclaimed moneys, in a previous trusteeship.

#### **c. Certificate of appointment**

If the court has no objection to the trustee, and the trustee gives security of the nature and amount required, the court will certify that his appointment has been duly made, and the appointment takes effect from that date. The trustee must advertise his appointment in the Kenya Gazette and in a local paper.

### **1.5 COMMITTEE OF INSPECTION**

A committee of inspection may be appointed by the creditors at their first or any subsequent meeting to supervise the trustee.

The committee consists of between **three** and **five** members, who must be creditors whose proofs have been admitted, or the holders of general proxies of powers of attorney from them; a person may be appointed before, but cannot act until, these conditions are satisfied.

### **1.6 RESOLUTIONS OF CREDITORS**

Normally, decisions at meetings of creditors are taken by ordinary resolution, viz., a resolution passed by a simple majority in value of creditors present, personally or by proxy, and voting on the resolution.

A **special** resolution, viz., a resolution passed by a simple majority in number and **three-fourths in value** of the creditors present and voting, is required:

- (a) To appoint a trustee other than the Official Receiver in a small bankruptcy;
- (b) To make an allowance to the bankrupt in a form other than money;
- (c) To require the Official Receiver to remove a special manager.

## **1.7 TERMINATION OF OFFICE OF TRUSTEE**

The trustee may vacate office in the following ways:

- (a) **Resignation** - He may resign at a meeting of creditors and with their consent.
- (b) **Removal** - He may be removed either by the creditors by ordinary resolution, or by the court
- (c) **Receiving order** - He automatically vacates office if a **receiving order** is made against him.
- (d) **Release** - He may be released by the court when the administration of the estate is complete, or he has resigned or been removed.

## **1.8 DEBTOR'S PROPERTY AT COMMENCEMENT OF BANKRUPTCY**

### **1.8.1 Doctrine of "relation back"**

The trustee's title to the debtor's property is deemed to relate back to the *commencement of the bankruptcy*, i.e., the time the act of bankruptcy was committed on which the receiving order was made or, if the bankrupt committed more than one act of bankruptcy, the time of the first such act committed *within the three months* preceding presentation of the petition.

All property belonging to the bankrupt at the commencement of the bankruptcy is divisible among creditors, with the following exceptions:

### **1.8.2 Protected transactions**

These fall into three categories:

#### **a. Under Section 50:**

- Payments by the bankrupt to creditors;
- Payments or deliveries to the bankrupt;
- Conveyances or assignments by the bankrupt for value; provided that:
- Other contracts, dealings or transactions by or with the bankrupt for value;

Provided that:

- (1) The transaction took place before the date of receiving order, and

(2) The other party did not notice of an available act of bankruptcy.

**b. Under Section 51:**

Any payment or delivery to the bankrupt or his assignee,

- Before the date of the receiving order,
- Without notice of presentation of the petition, and
- Either pursuant to the ordinary course of business or otherwise bona—fide.

This includes payments made to a third party "on the request, order or direction of the bankrupt" (*Re Dalton*)

**c. Payment or transfer of money or property of the bankrupt by a person in possession of it to some other person, after the date, but before the gazetting, of the receiving order, provided that the transferor had no notice of the receiving order.**

Such a transaction is not completely protected - but no claim can be made against the transferor unless it is "not reasonably practicable" for the trustee to recover it from the transferee.

**1.8.3 Completed executions**

A judgement creditor cannot retain the "benefit" of an execution or attachment, unless he has completed it-

- i. Before the date of the receiving order, and
- ii. Without notice of the presentation of a petition or the commission of an available act of bankruptcy, but he can retain any money received by him before that date (*Re Andrew*).

If the judgement **exceeds** Shs 400 the bailiff must retain the proceeds of sale for 14 days, and us hand over the proceeds to O.R. or trustee, of notice of a petition is served on him during that time; and the same applies if, before sale, notice is served on him that a receiving order has been made. The court has discretion to set aside these rights in favour of the creditor if it thinks fit.

**1.8.4 Trust Property**

Property held by the bankrupt on trust for any other person does not pass to his trustee.

**1.8.5 Excepted articles**

The trustee cannot claim the tools of the bankrupt's trade or necessary wearing apparel and bedding of the bankrupt and his family to a total value not exceeding Shs 500.



### **1.8.6 Determinable interests**

The trustee cannot claim property in which the bankrupt's interest is determinable upon bankruptcy, except property settled by the bankrupt on himself on these terms.

### **1.8.7 Personal rights of action**

Rights of action relating to the bankrupt's property pass to the trustee, but those affecting his person, e.g. for assault or libel, do not.

### **1.8.1 Contracts of personal service**

Contracts involving the personal skill of the bankrupt do not pass to the trustee; other contracts do unless disclaimed.

## **1.9 PROVABLE DEBTS**

All debts and liabilities present or future, certain or contingent, are provable in bankruptcy, except:

- (a) Claims for unliquidated damages in tort;
- (b) Debts incurred after the creditor had notice of an available act of bankruptcy;
- (c) Debts incapable of being fairly estimated;
- (d) Debts incurred after the date of the receiving order;
- (e) Debts void or unenforceable under the ordinary law of contract;
- (f) Maintenance payable by a husband to his wife.

Non-provable debts, if otherwise enforceable, are unaffected by the bankruptcy and can be enforced after discharge.

In the case of contingent debts e.g. possible liability as an endorser of a bill of exchange, the trustee must estimate the value of the contingent liability. If the creditor is aggrieved he may appeal to the court which may itself value the liability. If, in the opinion of the court, the liability cannot be fairly estimated the debt will not be provable.

These provable debts include:

- **Guarantees**

The creditor or a surety (but not both) may prove in the bankruptcy of the principal debtor; a surety may prove in the bankruptcy of a co-surety; and a creditor may prove in the bankruptcy of a surety.

- **Bills of exchange**

The holder may prove in the bankruptcy of all prior parties, unless the bill was made for his accommodation.

- **Annuities**

An annuitant may prove for the estimated value of the annuity; if he dies before the proof is accepted, the amount becomes certain and the proof must be amended; if he dies after declaration of a dividend, the payment on the estimate cannot be disturbed, even though it exceeds the amount actually due.

- **Periodical payments**

Rent and other payments falling due at stated periods may be apportioned and proof from the person entitled to payment may be lodged for the proportionate part accruing due at the date of the receiving order.

- **Interest**

Interest may be claimed-up to the date of the receiving order - if it is payable:

- By agreement;
- By statute;
- If the debt was created in writing and due at a certain time at 6% p.a. from due date; or
- Otherwise, after written demand for payment giving notice that interest is claimed, at 6% p.a. from date of demand.

Interest over 6% p.a. is a deferred debt, although except in the case of a moneylender, the trustee can admit proof for the full amount.

Statutory interest is payable in all debts at 6% p.a. from the date of the receiving order, if there is a surplus after payment of all debts in full.

Sums paid to the creditor before the receiving order must be apportioned between principal and interest.

## **1.10 MUTUAL DEALINGS**

A right of set-off is allowed where there have been -

- (a) Mutual credits, debts or other dealings resulting in pecuniary liabilities,
- (b) Between the debtor and a creditor in the same right,
- (c) Prior to the date of the receiving order,
- (d) Without notice of an available act of bankruptcy.

An account is taken as at the date of the order, and the balance paid or claimed by the creditor.

Persons with mutual dealings cannot contract out of the right of set-off given by s.36 *ibid* though it may be possible for them to agree that their dealings shall not be regarded as mutual. **National Westminster Bank Ltd. v Halesowen Presswork and Assemblies Ltd. (1972).**

### **1.11 SECURED CREDITORS**

A secured creditor may:

- (a) Rely on his security and not prove at all.
- (b) Surrender his security and prove for the full amount of the debt.
- (c) Realize his security (if he has a power of sale) and prove for the balance; or
- (d) Estimate the value of his security and prove for the balance.

He must disclose the security in his proof or surrender it to the trustee unless the court grants relief. If the creditor estimates his security

- i. If proof used for voting purposes trustee may within 28 days require him to give up security on payment of its estimated value plus 20% or amount at which revalued by creditor;
- ii. If valued for dividend purposes trustee may redeem it at any time by paying its assessed value or if dissatisfied with valuation require security to be sold;
- iii. He may by writing, require trustee to redeem security or have it realised, and if trustee does not do so within six months property vests absolutely in creditor;
- iv. He may amend valuation and proof at any time unless he has called upon trustee to redeem
- v. He may realise security and amend his proof accordingly.

### **1.12 LANDLORD'S RIGHT OF DISTRESS**

The Landlord's right to distress for arrears of rent is not lost on the tenant's bankruptcy, but

- (a) Distress can only be levied after commencement of bankruptcy for up to six month's rent due prior to adjudication and is not available for rent payable after date of distress;
- (b) If distress is levied within three months preceding date of receiving order, proceeds are subject to a first charge in favor of preferential creditors; if the landlord suffers loss as a result he acquires the same rights of priority as the preferential creditors who are paid;

(c) He can distress for rent due after adjudication if trustee remains in possession and does not disclaim lease; if tenant's goods have been seized in execution of a judgment, landlord can claim up to one year's arrears out of proceeds, or six months' arrears if claim made after commencement of bankruptcy.

Unless the landlord has distressed he has no priority over the creditors.

### **1.13 PROOF OF DEBTS**

The following rules apply as to the proving of debts:

- (a) A creditor has no right to vote or receive dividends until his debt is proved to the satisfaction of the trustee;
- (b) Proofs should be made by affidavit as soon as possible after the receiving order - but may be accepted at any time before the final dividend;
- (c) Proofs may be made provisionally accepted for voting at the first meeting of creditors;
- (d) The trustee (but not the O.R.) must deal with a proof within 28 days of receipt; if the proof is rejected the creditor may appeal to the court within 21 days;
- (e) The trustee must satisfy himself that there is a real debt; he is not bound by any judgment or estoppel against the debtor;
- (f) The trustee may apply to the court to expunge or reduce a debt wrongfully admitted;
- (g) The trustee must each month file with the court all proofs admitted or rejected in the previous month and on declaring a dividend he must send to the court a list of proofs so filed;
- (h) Proof on a contingent debt may be admitted for dividend purposes but not for voting while the contingency remains;
- (i) **Double proof is not allowed** in the same bankruptcy for the same debt but proof may be lodged against two separate estates for the same debt.

### **1.14 ORDER OF PAYMENTS**

The bankrupt's estate must be distributed in the following order.

#### **1.14.1 Cost and charges**

Costs and charges properly incurred in administering the estate must be paid in priority to all debts and in the proper sequence.

#### **1.14.2 Pre preferential debts**

These are:

- a) Proper funeral and testamentary expenses of a deceased insolvent;
- b) Premiums paid by apprentices or articulated clerks;
- c) Property of a friendly society of which the bankrupt is an officer; and
- d) Expenses properly incurred by a trustee of a deed of arrangement.

If funds are insufficient to pay these in full, they abate rate ably.

#### **1.14.3 Preferential debts**

These include:

- a) Local rates and amounts deducted as P.A.Y.E by a bankrupt employer from employees' pay accruing due during the twelve months preceding the receiving order;
- b) Up to one year's arrears of any other assessed taxes;
- c) Wages and salary due to employees for work done during the four months preceding the receiving order up to Shs 4,000 per employee;
- d) Rents due to the Government not more than five years in arrear;
- e) Employer's national social security fund contributions due during the previous twelve months.
- f) Amounts due for compensation under the Workmen's Compensation Act. If funds are insufficient to pay these in full, they abate rateably.

#### **1.14.4 Unsecured debts**

These rank equally after payment of preferential debts in full.

#### **1.14.5 Deferred debts**

These include:

- a) Accrued interest in excess of 6% per annum, due to an unsecured creditor;(paid in priority to other deferred creditors).
- b) Salary or wages due to or money or other property lent by a relative by consanguinity or affinity i.e. a grandparent, parent, uncle or aunt, brother or sister or cousin, child (including adopted child) or nephew or niece, grandchild or any person married to any one of these; or a husband or wife.
- c) Loans to a person for business purposes at a rate of interest varying with profits;

- d) b) and c) rank equally — proof cannot be admitted for any purpose until all other debts are paid in full.
- e) Statutory interest at 6% per annum; and
- f) Claims arising under a settlement set aside by the trustee.

#### **1.14.6 Surplus**

Any surplus remaining after payment of all debts and other liabilities in full must be returned to the bankrupt.

### **1.15 DIVIDENDS**

Dividends must be declared and paid in accordance with the following rules:

- a) The first dividend must be declared and paid within four months of the first meeting of the creditors, unless postponed with the consent of the committee of inspection;
- b) Subsequent dividends must be declared and paid at intervals of not more than six months;
- c) The trustee must give not more than two months notice of intention to declare a dividend to every creditor mentioned in the statement of affairs who has not proved his debt, requiring proof to be lodged not later than a date at least 14 days from the date of the notice; he must admit or reject all proofs within 14 days of the date specified; appeal against rejection must be commenced within seven days; the trustee must have the notice gazetted;
- d) After declaring a dividend, details thereof must be sent to every creditor who has proved and must be gazetted;
- e) The trustee must make provision for creditors who have not had time to submit proofs, or to establish disputed claims, and for the expenses of administration;
- f) A creditor who has not proved before declaration of a dividend may be paid if the trustee has any money still in his hands, and may participate in future dividends;
- g) If a dividend is paid on a future debt, a rebate of interest at 6% per annum from the date of the dividend to the date for payment of the debt must be deducted;
- h) A final dividend may be declared when all the bankrupt's property has been realised, or so much of it as can be realized without needlessly protracting the trusteeship; notice must be given to persons who have notified, but have not established, their claims, requiring them to do so within the time specified in the notice;

- i) Unclaimed dividends remaining in the hands of the trustee for six months must be paid into the Bankruptcy Estates Account; the receipt of the Official Receiver discharges the trustee in respect thereof, any claimant must apply to the Official Receiver for payment.

### **1.16 SMALL BANKRUPTCIES**

The court may order the estate of a debtor to be administered summarily, if the debtor's assets **are not likely to exceed** Shs 12,000 in value. This is known as a "small bankruptcy" or "summary case".

A small bankruptcy differs from an ordinary bankruptcy in the following respects:

1. The Official Receiver acts as trustees;
2. There is no committee of inspection — the court gives all necessary consents;
3. The proceedings need not be advertised in a local paper;
4. The court may regard the debtor as being bankrupt forthwith if no composition or scheme is proposed;
5. The first meeting of creditors may be held at the same time as the public examination or at any other given time fixed by the Official Receiver;
6. Notice of subsequent meetings need not be sent to creditors whose claims do not exceed Shs 40;
7. A single dividend is paid, if possible, within six months of the first meeting of creditors;
8. Simpler accounts are required;
9. Costs, other than a solicitors', need not be taxed, unless required by the O.R.;
10. The court's consent is not required to disclaim leases not sublet or mortgaged.

### **1.17 RECEIVERSHIPS**

If a company defaults in payment of principal or interest, or otherwise defaults in observing the conditions contained in debentures issued, a receivership may result. . A receiver can only be appointed where the debentures are secured by a fixed or floating charge, or both.

Where power is given in the terms of issue, the debenture holders or their trustees, if there is a trust deed, may appoint a receiver without having to apply to the court; and where the terms of issue provide for such an appointment, they usually provide also for the events upon the happening of which he shall be appointed, e.g. non—payment of principal, interest in arrears.

If no power to appoint a receiver is given by the terms of issue, the trustee for the debenture holders, or a debenture holder acting on behalf of himself and others, may ask the court to appoint a receiver. Before such an appointment will be made it will be necessary for the applicant to show that:-

- (a) Default is made in payment of principal or interest
- (b) The company is being wound up, or
- (c) The security is in jeopardy.

An appointment will be made under (c) where there is a serious risk that the security may be seized to satisfy claims which do not rank in priority to those of the debenture holders, e.g., where unsecured creditors obtain a judgement and levy execution; but mere insufficiency of the security is not itself "jeopardy" re (**New York Taxicab Co**).

A body corporate may not be appointed S.345 (Companies Act 1962), nor an undischarged bankrupt, except under an appointment by the court S.346. The official receiver may be appointed if the company is being wound up by the court S.347.

The duties of a receiver are to get in and realise the assets subject to the charge - he has no power to carry on the business of the company; if such a power is required, as where there is a floating charge on the company's business or undertaking and it is desired to sell the business as a going concern, the receiver (or some other person) may be appointed manager to carry on the business for this purpose: if appointed by the court this will be for a limited period, usually three months.

Effects of the appointment of the receiver:

- (a) Floating charges: these crystallise on the appointment of a receiver and become fixed on the assets then in the hands of the company, which cannot be dealt with without the receiver's consent.
- (b) Directors: their powers to deal with the assets charged are suspended, but their appointments are not terminated.
- (c) Employees: if the receiver is appointed by the court, they are automatically dismissed, but may be re-employed by him (*Reid v Explosives Co.*): if appointed out of court as agent of the company, their position is not affected (re *Mack Trucks Ltd 1967*).

If appointed by the court, the receiver must give security as directed by the court.



The following notification must be given:

- (a) The debenture holders must give notice of the appointment to the registrar within seven days for entry in the register of charges s.103,
- (b) If appointed receiver or manager of substantially the whole of the company's assets under a floating charge, the receiver must give notice of his appointment forthwith to the company s.351 (1)(a),
- (c) Every invoice, order for goods or business letter on which the company's name appears must state that a receiver or manager has been appointed s.349.

Where (b) above applies, the company must, within 14 days of receiving the notice (or such longer period as the court or the receiver may allow), submit a statement of affairs to the receiver s. 351 (1)(b), verified by affidavit or statutory declaration by a director and the secretary, and showing.

- i. Particulars of the company's assets, debts and liabilities
- ii. Names, residences and occupations of creditors
- iii. Securities, if any, held by them, and the dates on which they were given, and

- (d) Such further or other information as may be prescribed **s.352(1).**

The receiver may, if necessary, require the statement to be submitted by:

- (a) Past or present officers of the company
- (b) Persons who have taken part in the formation of the company at any time within the previous year
- (c) Persons employed by the company within the previous year, and capable, in the opinion of the receiver, of giving the information required
- (d) Persons who are or have been within the previous year officers or employees of a company which is or has been within that year an officer of the company **s.352(2).**

Within two months of receipt of the statement of affairs the receiver must send:

- (a) A copy of the statement of affairs
- (b) His comments thereon (if any)

- (c) A summary of the statement of affairs, and
- (d) A summary of his comments, to:
  - i. The registrar
  - ii. The court (if appointed by the court) - (a) and (b) only
  - iii. The company - (b) only, or a notice that has no comments to make, and
  - iv. To the debenture holders and their trustees (if any) - (c) only **s.351(1) (c).**

Apart from the duties imposed by law, the receiver should, upon appointment, master the terms of his appointment and ensure the validity of the charge, and, if he is appointed manager:- open an account as receiver and have existing balances and all moneys received paid into that account: give instructions that no goods are to be ordered or payments made without his authority, and that all letters etc., are to comply with s.349; make arrangements for continuing or terminating contracts of employment; take an inventory of all the assets; check insurances; and prepare lists of the company's debtors and particulars of the debts.

If the receiver is appointed by the court, he is an officer of the court, and no action can be brought against him, or taken or continued by him without leave of the court; he is not the agent of either the company or the debenture holders.

(a) Liability on contracts: he is personally liable on contracts made by him, with a right of indemnity against the company's assets; he is not bound by existing contracts except by novation, but he should carry out such contracts if failure to do so would damage the company's goodwill.

(b) Borrowing powers: he may obtain leave of the court to borrow money on security ranking in priority to the debentures, and may borrow without security in the ordinary course of business without leave.

(c) Remuneration: this is fixed by the court.

If the receiver is appointed out of court, *prima facie*, he is the agent of the debenture holders, but he is usually expressly appointed as agent of the company; he may apply to the court for directions s.348 (1).

(a) Liability on contracts: he is personally liable to the same extent as if appointed by the court and with the same right of indemnity s.348(2); if appointed as agent of the company the debenture holders are not liable for his acts, but he may require an indemnity from them before accepting the appointment; he ceases to be the company's agent and his authority as manager (if any) to carry on the company's business is revoked in the event of winding up.

(b) Borrowing powers: the same as if appointed by the court.

(c) Remuneration: this is fixed by agreement with the debenture holders, but the court may fix it retrospectively on the application of the liquidator s.350.

If appointed in circumstances to which s.351 applies (see above) he must within two months of the end of each year after his appointment and of ceasing to act send an abstract of his receipts and payments during that period and the aggregate amounts of receipts and payments since his appointment to:

(a) The registrar

(b) The company, and

(c) The debenture holders and their trustees if any s.351 (2).

Otherwise, e.g. where the charge is a fixed charge only on certain assets, if appointed out of court, he must send similar accounts every six months and on ceasing to act to the registrar s.353; and, if appointed by the court he must file accounts with the court as often as the court may require.

If the receiver is appointed in respect of debentures secured by a floating charge, he must pay in full those debts which would be preferential in liquidation under s.311 before paying the debenture holders s.95. The order of payments out of the proceeds that the receiver has realised is:

(a) Cost of realization

(b) Receiver's costs and remuneration

(c) Trustee's remuneration (if any)

(d) Plaintiff's cost of action (if receiver appointed by court)

(e) Preferential creditors (if applicable)

(f) Debenture holders.

If appointed by the court, the receiver is discharged by order of the court and his security released; if appointed out of court, he is discharged by agreement with the debenture holders, and, in this case, notice of his ceasing to act must be given to the registrar for entry in the register of charges s.103(2).

## **1.18 LIQUIDATION OF COMPANIES**

### **1. A Contributory**

A contributory is a person liable to contribute to the assets of the company in the event of winding up s.213: this includes all present members (even though their shares are fully paid) and past members who ceased to be members during the year preceding the winding up and the personal representative of a deceased member - but not the trustee in a member's bankruptcy or the holders of share warrants.

## CHAPTER TWO

### ACCOUNTING FOR WINDING UP

Winding up accounts include the statement of affairs and deficiency account.

#### 1) The Statement of Affairs

This statement sets out the various assets of the debtor, at the values they are expected to realize and the creditors, classified according to their "priority".

The balancing figure on the statement of affairs is the **estimated deficiency** as at the date at which it was prepared. For a **sole trader**, one statement of affairs will be prepared to include all assets and liabilities, whether private or business. For a **partnership**, a statement of affairs is prepared in respect of the partnership assets and liabilities - called the joint estate. A separate statement is also prepared for each partner, showing his personal assets and liabilities. Any surplus on a separate estate becomes an asset of the joint estate and vice versa.

The pro-forma statement of affairs sets out the order in which **assets** are shown.

The order in which **liabilities** are discharged is:

1. Secured creditors, out of the proceeds of their security;
2. Costs and expenses of the bankruptcy; (these are not included in the Statement of Affairs because they have not been incurred at the date at which it is prepared);
3. Pre-preferential creditors (see paragraph 6.24 above);
4. Preferential creditors (see paragraph 6.24 above);
5. Unsecured creditors;
6. Deferred creditors (see paragraph 6.24 above);
7. Any balance to the debtor.

#### 2) The Deficiency Account

The purpose of the deficiency account is to explain the deficit shown on the statement of affairs.

The deficiency account opens with the surplus of assets over liabilities of the bankrupt, one year before receiving order. This figure consists of the capital account of his business plus his net private assets at that date.

##### **Items contributing to deficit:**

The following items will be shown on the right-hand side of the deficiency account as being items contributing to the deficit:

1. Losses during the period as per the profit and loss account;
2. Bad debts;
3. Drawings and household expenses;
4. Estimated losses on the realisation of assets:

**Items reducing the deficit:**

Items reducing the deficit would include profits from trading and estimated profit on the realization of assets.

**Notes:**

- a. It is necessary to draw up a balance sheet at the date of the receiving order to provide the basis for agreeing the deficiency shown in the statement of affairs with that in deficiency account.
- b. Preparation of the statement of affairs and the deficiency account is based on "double entry" principles.
- c. Items not in the balance sheet must have a debit and credit within the statement of affairs and deficiency account.
- d. Where the estimated realisable value of an asset differs from its book value i.e. the value at which it appears in the balance sheet given the difference must be reflected in the deficiency account- An estimated loss is put on the **right-hand side** while an estimated surplus is put on the **left-hand side**.
- e. A landlord may recover by distress rent outstanding in respect of the period, not exceeding six months, prior to adjudication (date debtor declared bankrupt). If the landlord distrains he effectively removes assets to satisfy the outstanding rent and can therefore be considered in the same category as a secured creditor. In other cases treat the rent outstanding as an ordinary creditor.
- f. Deferred creditors do not become entitled to any dividend at all until the unsecured creditors have received payment in full; however include them in the unsecured creditors in the Statement of Affairs and put in a note on the Statement of Affairs. If there is any surplus, the deferred creditors will rank against it to the full extent of their debts before any return is made to the debtor.

## 2.1 STATEMENT OF AFFAIRS

A statement of affairs takes the following form:

| <b>INDIVIDUAL STATEMENT OF AFFAIRS</b><br><b>AS AT (DATE), DATE OF RECEIVING ORDER</b> |   |                          |  |                        |                      |
|--|---|--------------------------|--|------------------------|----------------------|
| Gross Liabilities  | Liabilities as stated & estimated by debtor | Expected to rank         | Assets as stated & estimated by debtor |                        | Estimated to produce |
| Sh '000'   |   | Sh '000'                 |  | Sh '000'               | Sh '000'             |
| X  | Unsecured creditors                         | x <input type="text"/>   | Cash at bank                           |                        | x                    |
| X  | Creditors fully secured                     | x <input type="text"/>   | Cash in hand                           |                        | x                    |
|  | Less value of security                      | (x) <input type="text"/> | Stock-in-trade                         |                        | x                    |
|  | Surplus to contra                           | x <input type="text"/>   | Machinery                              |                        | x                    |
| X  | Creditors partly secured                    | x <input type="text"/>   | Trade fixtures                         |                        | x                    |
|  | Less value of security                      | (x) <input type="text"/> | Furniture                              |                        | x                    |
|  |   | x <input type="text"/>   | Life policies                          |                        | x                    |
| X  | Liabilities on bills discounted             | x <input type="text"/>   | Stocks, shares and other investments   |                        |                      |
| X  | Contingent and other liabilities            | x <input type="text"/>   | Bank debts: Good                       |                        | x                    |
| X  | Preferential creditors deducted per contra  | x <input type="text"/>   | : Doubtful                             | x <input type="text"/> |                      |
|  |   |                          | : Bad                                  | x <input type="text"/> |                      |
|  |   |                          |  | x <input type="text"/> |                      |
|  |   |                          | Estimated to produce                   | <input type="text"/>   | x                    |
|  |   |                          | Bills of exchange                      | x <input type="text"/> |                      |
|  |   |                          | Estimated to produce                   | <input type="text"/>   | x                    |
|  |   |                          | Surplus from                           |                        |                      |

| <b>INDIVIDUAL STATEMENT OF AFFAIRS</b><br><b>AS AT (DATE), DATE OF RECEIVING ORDER</b> |   |                  |  |  |                      |
|--|---|------------------|--|--|----------------------|
| Gross Liabilities  | Liabilities as stated & estimated by debtor | Expected to rank | Assets as stated & estimated by debtor   |  | Estimated to produce |
| <u><u>XX</u></u>   |   |                  | secured Creditors per contra             |  | x                    |
|  |   |                  |  |  | x                    |
|  |   |                  | Deduct preferential Creditors per contra |  | (x)                  |
|  |   |                  |  |  | x                    |
|  |   |                  | Deficiency as per Deficiency a/c         |  | <u>x</u>             |
|  |   | xx               |  |  | xx                   |

| DEFICIENCY (SURPLUS) A/C               |   |          |                                  |   |
|--|---|----------|----------------------------------|---|
|  |   | Ksh 000’ | Ksh‘000’                         |   |
| Excess of assets over liabilities      |   |          | Losses from Trading              | x |
| (One year before receiving order)      | x |          | Estimated loss on realization of |   |
| Excess of private assets over          |   |          | Assets                           | x |
| Liabilities (one year before receiving |   |          | Drawings                         | x |
| Order)                                 | x |          |                                  |   |
| Net profits from the business for the  |   |          |                                  |   |
| Period under review                    | x |          |                                  |   |
| Other receipts-gifts legacies etc      | x |          |                                  |   |
| Deficiency as per statement of affairs | x |          |                                  |   |



**Example 1**

Njuguna Mwandawiro, carrying on a business as a trader in Likoni, Mombasa, finds himself insolvent, and on 15 August 1997 files his petition in bankruptcy. The following balances are extracted from the books of his business on that date:

|                                     | Kshs             |                        | Kshs             |
|-------------------------------------|------------------|------------------------|------------------|
| N. Mwandawiro Capital               | 1,200,000        | Shop – land and        | 4,000,000        |
| Mortgage on shop (land & buildings) | 3,000,000        | buildings              | 1,000,000        |
| Loan – I.C.D.C. Ltd.                | 1,200,000        | Furniture and fittings | 575,100          |
| Loan – Barclays Bank Ltd.           | 600,000          | Stock of goods         | 641,300          |
| Loan – Co-operative Bank Ltd.       | 200,000          | Debtors                | 1,314,000        |
| Loan – Paul Nkobei                  | 100,000          | N. Mwandawiro          | 2,000            |
| Loan – Mutiso Kuria                 | 20,000           | drawings               |                  |
| Trade creditors                     | 1,140,000        | Cash on hand           |                  |
| N.H.I.F., N.S.S.F. and P.A.Y.E.     | 36,000           |                        |                  |
| Salaries and wages payable          | 18,000           |                        |                  |
| Bank overdraft                      | <u>18,400</u>    |                        |                  |
|                                     | <u>7,532,400</u> |                        | <u>7,532,400</u> |

The following information is provided:

1. The trade creditors includes Sh.30,000 owing to Mombasa Municipal Council in respect of rates in for the current period and a small loan from Mwandawiro's friend Waititu for Sh. 10,000.
2. The amount owing for salaries and wages and statutory payroll deductions are for 1997.
3. There is 210,000 interest unpaid on the mortgage as at 15 August 1997, which has not been recorded in the books.
4. The loan from I.C.D.C. Ltd. is secured by a second mortgage on the shop (land and buildings). The unrecorded interest owing as at 15 August 1997 was Sh.96,000.

5. The loan from the Co-operative Bank Ltd. was obtained when Mwandawiro pledged his wholly owned piece of land as security. The value of the piece of land is sh.300,000. There is no interest outstanding on his loan.
6. The interest on loan from Paul Nkobei was to vary with profits, but since the business has been operating at a loss, there is no interest due.
7. There is no interest outstanding on the loan from Barclays Bank Ltd.
8. Mutiso Kuria is Mwandawiro's brother-in-law.
9. The value of the assets is estimated to be:

|                           | Kshs      |
|---------------------------|-----------|
| Shop – land and buildings | 4,200,000 |
| Furniture and fittings    | 800,000   |
| Stock of goods            | 200,000   |

10. Of the debtors, Sh.400,000 are thought to be good and Sh.200,000 doubtful, of which Sh.150,000 should be collectable.
11. Mwandawiro's uncle died recently and he will be receiving Sh.50,000 as an inheritance.
12. Mwandawiro has no personal creditors outside the business, but he has other personal assets, beside the piece of land, amounting to Sh.60,000, exclusive of household and personal effects.

**Required:**

- (a) A statement of affairs for Njuguna Mwandawiro as at 15 August 1997 in good form (15 marks)
- (b) A deficiency account as at that date (4 marks)
- (c) A profit and loss account for the period ended 15 August 1997. (3 marks)

**(Total: 22 marks)**

## Solution

**NJUGUNA MWANDAWIRO**

### STATEMENT OF AFFAIRS AS AT 15 AUGUST 1997

| Gross Liability<br>Kshs | Liabilities                                     | Expected to<br>rank<br>Kshs | Assets  | Estimated to<br>produce<br>Kshs |
|-------------------------|---|-----------------------------|---|---------------------------------|
| 1,848,000               | Unsecured creditors (W1)                        | 1,848,000                   | Cash on hand                                    | 2,000                           |
|                         |   |                             | Stock   | 200,000                         |
| 3,410,000               | Fully secured creditors (W2)                    | 3,410,000                   | Furniture                                       | 800,000                         |
|                         | Less: value of security                         | 4,500,000                   | Personal assets                                 | 60,000                          |
|                         | Surplus mortgage                                | (990,000)                   | Debtors – Good                                  | 400,000                         |
|                         | Surplus bank loan                               | (100,000)                   | Doubtful  | 200,000                         |
|                         |   | (1,090,000)                 | Bad   | 41,300                          |
|                         |   |                             | <b>241,300</b>                                  |                                 |
| 1,296,000               | Partly secured creditors (W3)                   | 1,296,000                   | Estimated to produce                            | 150,000                         |
|                         | Deduct surplus from above)                      | (990,000)                   | Inheritance receivable                          | 50,000                          |
|                         |   |                             | Surplus from fully secured creditors per contra | 100,000                         |
|                         | Deficiency ranking unsecured                    | 306,000                     | <b>Total</b>                                    | <b>1,762,000</b>                |
| 84,000                  | Preferential creditors deducted per contra (W4) | 84,000                      | Preferential as per contra                      | (84,000)                        |
|                         |   |                             | <b>1,678,000</b>                                |                                 |
|                         |   |                             | Deficiency as per deficiency account            | <b>476,400</b>                  |
|                         |   |                             |   | -                               |
| <b>6,638,000</b>        |   | <b>2,154,400</b>            |   | <b>2,154,400</b>                |

## WORKINGS

### 1. Unsecured creditors

|                                      | Kshs      |
|--------------------------------------|-----------|
| Barclays bank loan                   | 600,000   |
| Loan from Paul Nkotei                | 100,000   |
| Loan from Mutiso Kuria               | 20,000    |
| Trade creditors (1,140,000 – 30,000) | 1,110,000 |

|                |                  |
|----------------|------------------|
| Bank overdraft | 18,400           |
|                | <u>1,848,400</u> |

**Assumption:**

Kuria is married to Mwendawiro's sister making him a relative by consanguinity.

2. Fully secured creditors

|                       | Liabilities      | Security         | Surplus          |
|-----------------------|------------------|------------------|------------------|
| Shop mortgage         | 3,210,000        | 4,200,000        | 990,000          |
| Cooperative Bank loan | <u>200,000</u>   | <u>300,000</u>   | <u>100,000</u>   |
|                       | <u>3,410,000</u> | <u>4,500,000</u> | <u>1,090,000</u> |

3. Creditors partly secured:

|                        | Liabilities | Value of Security | Deficit |
|------------------------|-------------|-------------------|---------|
| ICDC Loan (1,200 + 96) | 1,296,000   | 990,000           | 306,000 |

4. Preferential creditors

|                                    | Ksh.          |
|------------------------------------|---------------|
| Mombasa municipal council (Note 1) | 30,000        |
| Salaries and wages payable         | 18,000        |
| NHIF, NSSF & PAYE                  | <u>36,000</u> |
|                                    | <u>84,000</u> |

| DEFICIENCY ACCOUNT                         |                  |  |                  |
|--|------------------|--|------------------|
|  | Kshs             |  | Kshs             |
| Excess of business assets over liabilities | 1,200,000        | Estimated loss on realization of assets: |                  |
| Excess of private assets over liabilities  | 360,000          |  |                  |
|  | 1,560,000        | Furniture                                | 200,000          |
| Estimated surplus:                         |                  | Stock                                    | 200,000          |
| On realization on land & buildings         | 200,000          | Debtors                                  | 375,100          |
| Gift from uncle by will                    | 50,000           | (641,300–400,000–150,000)                | 91,300           |
|  |                  | Unrecorded expenses                      |                  |
| Deficiency as per statement of account     | 476,400          | Mortgage interest                        | 210,000          |
|  |                  | ICDC loan interest                       | 96,000           |
|  |                  | Drawings                                 | 1,314,000        |
|  | <b>2,286,400</b> |  | <b>2,286,400</b> |

The format for the statement of affairs and surplus or deficiency account of a partnership will be as follows:

| STATEMENT OF AFFAIRS                  |                        |                        |                        |                                     |                 |     |     |
|---------------------------------------|------------------------|------------------------|------------------------|-------------------------------------|-----------------|-----|-----|
|                                       | Joint<br>Estate        | A                      | B                      |                                     | Joint<br>Estate | A   | B   |
| Unsecured creditors                   | x                      | x                      | x                      | Assets not<br>specifically          |                 |     |     |
| Creditors fully<br>secured            | x <input type="text"/> | x <input type="text"/> | x <input type="text"/> | Pledged                             | x               | x   | x   |
| Less value of<br>security             | (x)                    | (x)                    | (x)                    | Surplus from<br>creditors           |                 |     |     |
| Surplus<br>below/contra               | x                      | x                      | x                      | Fully secured                       |                 | x   | x   |
| Creditors partly<br>secured           | x <input type="text"/> | x <input type="text"/> |                        | Preferential<br>creditors           |                 |     |     |
| Less value of<br>security/surplus b/d | (x)                    | (x)                    |                        | deducted per<br>contra              | (x)             | (x) | (x) |
| Preferential<br>creditors             | x                      | x                      |                        | Surplus from B's<br>Personal estate | x               |     |     |
| Deducted per<br>contra                | x                      | x                      | x                      | Deficiency as per<br>deficiency a/c | x               | x   |     |
| Surplus as per<br>surplus a/c         |                        |                        | x                      |                                     |                 |     |     |
|                                       | xx                     | xx                     | xx                     |                                     | xx              | xx  | xx  |

| SURPLUS/DEFICIENCY A/C  |                 |    |    |                      |                 |    |    |
|-------------------------|-----------------|----|----|----------------------|-----------------|----|----|
|                         | Joint<br>Estate | A  | B  |                      | Joint<br>Estate | A  | B  |
| Excess of assets over   |                 |    |    | Est. loss on         |                 |    |    |
| Liabilities             | x               | x  | x  | realization          |                 |    |    |
| Of assets               |                 |    |    | Of assets            | x               | x  | x  |
| Est. surplus on         |                 |    |    | Loss on guarantee    |                 | x  |    |
| realization             |                 |    |    |                      |                 |    |    |
| Of assets               | x               | x  | x  | Loss of partnership  |                 |    |    |
| Surplus from B's Estate | x               |    |    | Capital              |                 | x  | x  |
| Deficiency as per       |                 |    |    | Surplus as per       |                 |    |    |
| Statement of affairs    | x               | x  |    | Statement of affairs |                 |    | x  |
|                         | xx              | xx | xx |                      | xx              | xx | xx |

### Example

Akili and Bidii trade in a partnership under the name of Jaribio Enterprises. One of the creditors of the partnership presented a petition in bankruptcy against the partnership and the High Court made out a Receiving Order on 31 October 1996.

The assets and liabilities of the joint and separate estates on that date were as follows:

|                       |        |  | Book Value |           | Estimated |           | Realisable |
|-----------------------|--------|--|------------|-----------|-----------|-----------|------------|
| Values                |        |  |            |           |           |           |            |
|                       |        |  | Jaribio    | Akili     | Bidii     | Jaribio   | Akili      |
| Bidii                 |        |  |            |           |           |           |            |
|                       |        |  | Sh. '000'  | Sh. '000' | Sh. '000' | Sh. '000' | Sh. '000'  |
| Sh. '000'             |        |  |            |           |           |           |            |
| Land and buildings    | 11,750 |  | 3,000      | 4,500     | 13,500    | 4,800     |            |
|                       | 5,000  |  |            |           |           |           |            |
| Plant and equipment   | 13,640 |  |            |           | 8,500     |           |            |
| Furniture & household |        |  |            |           |           |           |            |

|                     |                 |               |               |       |
|---------------------|-----------------|---------------|---------------|-------|
| Goods               |                 | 600           | 850           | 200   |
| 420                 |                 |               |               |       |
| Stock               | 16,300          |               |               | 9,700 |
| Debtors             | 10,790          |               |               | 4,750 |
| Partnership capital |                 | 4,000         | 6,000         |       |
| Investments         |                 | 2,000         | 1,000         | 3,350 |
| 800                 |                 |               |               |       |
| Cash                | 200             | 100           | 300           |       |
| Motor car           | <u>        </u> | <u>900</u>    | <u>1,500</u>  | 300   |
| 500                 |                 |               |               |       |
|                     | <u>52,680</u>   | <u>10,600</u> | <u>14,150</u> |       |

|                       |                 |               |               |
|-----------------------|-----------------|---------------|---------------|
| Capital accounts: A   | 4,000           |               |               |
| B                     | 6,000           |               |               |
| Creditors             | 24,320          | 260           | 180           |
| Bank overdraft        | 8,360           |               |               |
| Loans secured on land |                 |               |               |
| And buildings         | 10,000          | 2,500         | 3,000         |
| Loans secured on cars |                 | 600           | 1,000         |
| Personal surpluses    | <u>        </u> | <u>7,240</u>  | <u>9,970</u>  |
|                       | <u>52,680</u>   | <u>10,600</u> | <u>14,150</u> |

**Additional information:**

1. Of Jaribio's creditors, Sh.700, 000 are preferential.
2. Jaribio's bank overdraft was secured by a second mortgage on the partnership, land and buildings and by the personal guarantee of Akili together with the deposit of his investments.
3. Akili and Bidii share profits or losses equally.

**Required:**

Statements of Affairs and Deficiency or Surplus Accounts for the firm and for the separate personal estates of the partners, using the format laid down in the Bankruptcy Act and showing the legal position in relation to the double proof.



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| Deficiency a/c                              |               |               |               |                                     |               |               |               |
|---|---------------|---------------|---------------|-------------------------------------|---------------|---------------|---------------|
|   | Joint         | Akili         | Bidii         |                                     | Joint         | Akili         | Bidii         |
|   | Estate        |               |               |                                     | Estate        |               |               |
|   | Sh.           | Sh. '000'     | Sh. '000'     |                                     | Sh. '000'     | Sh. '000'     | Sh. '000'     |
|   | '000'         |               |               |                                     |               |               |               |
| Excess of assets over liabilities           | 10,000        | 7,240         | 9,970         | Loss on o/d guarantee               |               | 8,360         |               |
| Estimated surplus on Realisation of assets: |               |               |               | Loss of P.ship capital              |               | 4,000         | 6,000         |
| Land and buildings                          | 1,750         | 1,800         | 500           | Est. loss on realisation of assets: | -             | 600           | 1,000         |
| Investments                                 | -             | 1,350         | -             | • Motor car                         | -             | -             | 200           |
| Surplus from B's estate                     | 2,840         |               |               | • Investment                        |               | -             | -             |
|   |               |               |               | • Debtors                           |               | -             | -             |
|   |               |               |               | • Stock                             |               | -             | -             |
|   |               |               |               | • Plant                             |               | -             | -             |
|   |               |               |               | • Furniture                         | -             | 400           | 430           |
| Deficiency as per SOA                       | 3,190         | 2,970         | -             | Surplus as per SOA                  | -             | -             | 2,840         |
|   | <u>17,780</u> | <u>13,360</u> | <u>10,470</u> |                                     | <u>17,780</u> | <u>13,360</u> | <u>10,470</u> |

#### Workings for unsecured creditors:

|                 | Sh. '000'    | Sh. '000' | Sh '000' |
|-----------------|--------------|-----------|----------|
|                 | Joint Estate | Akili     | Bidii    |
| Trade creditors | 24,320       | 260       | 180      |

|                      |               |            |            |
|----------------------|---------------|------------|------------|
| Less pref. Creditors | <u>(700)</u>  | <u>(-)</u> | <u>(-)</u> |
| Unsecured creditors  | <u>23,620</u> | <u>260</u> | <u>180</u> |

#### Workings for fully secured creditors

| Joint Estate:        | Liability<br>Kshs | Security<br>Kshs | Surplus<br>Kshs |
|----------------------|-------------------|------------------|-----------------|
| Loans (L &B)         | <u>10,000</u>     | <u>13,500</u>    | <u>3,500</u>    |
| Akili: Loans (L &B)  | <u>2,500</u>      | <u>4,800</u>     | <u>2,300</u>    |
| Bidii: Loans (L & B) | <u>3,000</u>      | <u>5,000</u>     | <u>2,000</u>    |

#### Workings for partly secured creditors

|                        | Sh. '000'    | Sh. '000'    | Sh. '000'    |
|------------------------|--------------|--------------|--------------|
| Joint Estate: Bank o/d | <u>8,360</u> | <u>3,500</u> | <u>4,860</u> |
| Akili: Bank o/d        | 8,360        | 3,350        | 5,010        |
| : Car Loan             | <u>600</u>   | <u>300</u>   | <u>300</u>   |
|                        | <u>8,960</u> | <u>3,650</u> | <u>5,310</u> |
| Bidii: Car Loan        | <u>1,000</u> | <u>500</u>   | <u>500</u>   |

#### Receivership Accounts

This can be summarized depending on the nature of the situation. In a receivership you may be required to prepare a receivers receipt and payments. In the process of liquidation you have various reports. They can be summarized as follows:

Pro-forma Statement of Affairs of a Company in Compulsory or Creditors' Voluntary Liquidation

## STATEMENT OF AFFAIRS AS AT.....

### Assets not specifically

#### Pledged:

Balance at bank

Investments

Trade debtors

Stock-in-trade

Fixed Assets

Est.

Realisable

Values (Sh)

xx

xx

xx

xx

xx

xx

### Assets specifically

#### pledged

Asset 1

Asset 2

| Est.<br>Realisable<br>Values (sh) | Due to<br>secured<br>crs (sh) | Deficiency<br>unsecured<br>(sh) | Surplus to<br>last (sh) |
|-----------------------------------|-------------------------------|---------------------------------|-------------------------|
| xx                                | xx                            | xx                              | xx                      |
| xx                                | xx                            | xx                              | xx                      |
| xx                                | xx                            | xx                              | xx                      |

Estimated Surplus from assets specifically pledged

xx

ESTIMATED TOTAL ASSETS

xx

Gross

Liabilities

(sh)

Xx

Xx

Xx

### Liabilities

Secured creditors (Fixed charge)

Preferential creditors

Estimated surplus for unsecured creditors and

Creditors secured by a floating charge.

Secured creditors (Floating charge)

(xx)

xx

(xx)

| STATEMENT OF AFFAIRS AS AT..... |   |    |      |
|---------------------------------|---|----|------|
|                                 | Estimated surplus for unsecured creditors           |    | xx   |
|                                 | Unsecured creditors:                                |    |      |
| Xx                              | -Trade creditors                                    | xx |      |
| Xx                              | - Bank overdraft                                    | xx |      |
| Xx                              | - Contingent liabilities                            | xx |      |
| Xx                              | - Unsecured deficiency on pledged assets            | xx |      |
| Xx                              |   |    | xx   |
|                                 | Estimated deficiency as regards unsecured creditors |    | (xx) |
|                                 | Issued and called up share capital                  |    | (xx) |
|                                 | ESTIMATED DEFICIENCY AS REGARDS MEMBERS             |    | xx   |

#### Pro-Forma “Deficiency or Surplus Account”

| DEFICIENCY OR SURPLUS ACCOUNT                                 |  |     |     |
|---|--|-----|-----|
| <u>Items contributing to deficiency (or reducing surplus)</u> |  | Shs | shs |
| 1)  | Excess of capital and liabilities over assets 3 years before winding up (if any)       |     | xx  |
| 2)  | Dividends and bonuses declared   |     | xx  |
| 3)  | Net trading losses   |     | xx  |
| 4)  | Losses other than trading losses written off   |     | xx  |
| 5)  | Estimated realization losses   |     | xx  |
| 6)  | Other items contributing to deficiency   |     | xx  |
|   |  |     | xx  |
| <u>Items reducing deficiency (or contributing to surplus)</u> |  |     |     |
| 7)  | Excess of assets over capital and liabilities 3 years before winding up order (if any) | xx  |     |
| 8)  | Net trading profits  | xx  |     |
| 9)  | Profits and income other than trading profits  | xx  |     |

|   |       |             |
|---|-------|-------------|
| 10) Other items reducing deficiency or contributing surplus | xx    |             |
|   | <hr/> | xx          |
| DEFICIENCY AS PER STATEMENT OF AFFAIRS                      |       | <hr/>       |
|   |       | xx          |
|   |       | <hr/> <hr/> |

### **Tutorial Notes:**

Item number 1 above would be represented by a debit balance on the P & L account.

Item number 7 above would be represented by the reserves of the company three years before the winding up order.

### **Example**

A compulsory winding up order was made on 30 November 2003 against Hasara Ltd. A summary of the company's balance sheet as at that date was as follows:

| <b>Non-current assets:</b>   | <b>Sh. “000”</b> | <b>Sh. “000”</b> | <b>Sh. “000”</b> |
|--|------------------|------------------|------------------|
| Goodwill   |                  |                  |                  |
| Freehold property  |                  |                  | 2,689            |
| Plant and machinery  |                  |                  | 4,940            |
| Shares in subsidiaries   |                  |                  | <u>14,620</u>    |
|  |                  |                  | 22,249           |
| <b>Current assets:</b>   |                  |                  |                  |
| Stocks   |                  | 19,180           |                  |
| Debtors  |                  | 9,040            |                  |
| Cash in hand   |                  | <u>20</u>        |                  |
|  |                  | 28,240           |                  |
| <b>Current liabilities:</b>  |                  |                  |                  |
| Bank overdraft   | 22,790           |                  |                  |
| Creditors  | 20,900           |                  |                  |
| Customs and excise tax   | 200              |                  |                  |
| Accruals   | 399              |                  |                  |
| Debenture interest due   | <u>100</u>       | (44,389)         | (16,149)         |
|  |                  |                  | <u>6,100</u>     |
| <b>Financed by:</b>  |                  |                  |                  |
| Share capital 5,000,000<br>ordinary shares of Sh.20 each<br>– fully paid |                  |                  | 10,000           |
| 400,000 ordinary shares of<br>Sh.20 each- Sh.12.50 paid                  |                  |                  | <u>5,000</u>     |
|  |                  |                  | 15,000           |
| <b>Revenue reserves:</b>   |                  |                  |                  |
| Retained profits (losses)  |                  |                  | (12,900 )        |
| Shareholders’ funds  |                  |                  | 2,100            |
| <b>Non-current liability:</b>  |                  |                  |                  |
| 10% debentures   |                  |                  | <u>4,000</u>     |
|  |                  |                  | <u>6,100</u>     |

**Additional information:**

1. The 10% debentures are secured by a first charge on freehold property and the bank overdraft is secured by a floating charge on the assets.

2. The accruals consisted of:

|   | Sh. "000"  |
|---|------------|
| Directors fee, 6 months to 30 November 2003.    | 75         |
| Managers salary, 2 months to 30 November 2003   | 80         |
| Wages of 3 workmen, 4 weeks to 30 November 2003 | 18         |
| Rates – half year to 30 November 2003           | 20         |
| Taxes for the year to 30 November 2001          | 120        |
| Miscellaneous expenses                          | <u>86</u>  |
|   | <u>399</u> |

A holder of 20,000 of the partly paid shares was bankrupt and it was anticipated that his trustees would be in a position to pay a dividend of 25% to his unsecured creditors.

4. The company's assets were estimated to be realized as follows:

|                     | Sh. "000" |
|---------------------|-----------|
| Freehold property   | 4,480     |
| Plant and machinery | 14,000    |
| Stocks              | 18,760    |

5. The debtors were considered to be good except as to Sh. 520,000 of which Sh. 400,000 were doubtful and were expected to realize Sh.110,000. The remaining Sh.120,000 were considered bad. Goodwill was regarded as valueless.

6. Legal proceedings for breach of contract were pending against the company as at 30 November 2003. The company was considered to have a poor defence and attempts were being made to settle the claim out of court for Sh.100,000 plus costs estimated at Sh.80,000. No provision for this claim is included in the balance sheet.

7. The company had incurred losses of Sh.3,040,000, Sh.3,840,000 and 6,020,000 respectively in each of the three years ended 30 November 2003. The aggregate of the sums charged to the profit and loss accounts during the three years in respect of depreciation, debenture



interest and directors' remuneration were Sh.2,380,000, Sh.600,000 and Sh.1,800,000 respectively.

**Required:**

(a) Statement of affairs as at 30 November 2003. (10 marks)

(b) Deficiency account as at 30 November 2003. (10 marks)

**(Total: 20 marks)**

**Solution**

**HASARA LTD**

**STATEMENT OF AFFAIRS AS AT 30.11.2003**

|   | Sh.'000'       |
|---|----------------|
| Assets not specifically pledged                   |                |
| Cash in hand                                      | 20             |
| Debtors (8,510 + 110)                             | 8,630          |
| Stocks  | 18,760         |
| Plant and machinery                               | 14,000         |
| Amounts receivable from calls (2,850 + 25% x 150) | <u>2,887.5</u> |
|   | 44,297.5       |

Assets Specifically pledge

|                   | Estimation<br>realizable Values<br>Sh.'000' | Due to secured<br>Creditors<br>Sh.'000' | Surplus carried to<br>last column<br>Sh.'000' |     |
|-------------------|---|---|---|-----|
| Freehold property | 4,480                                       | 4,100                                   | 380   | 380 |

|   |                 |
|---|-----------------|
| Estimated total assets available for preferential creditors,      |                 |
| Bank overdraft secured by floating charge and unsecured creditors | 44,677.5        |
| <u>Summary of Assets</u>  | 4,480           |
| Gross realizable value of assets specifically pledged             | <u>44,297.5</u> |
| Other assets  | <u>48,775</u>   |
| Gross assets  |                 |

|                    |   |            |                   |
|--------------------|---|------------|-------------------|
| <u>Gross</u>       |   |            |                   |
| <u>Liabilities</u> | <u>Liabilities</u>  |            |                   |
| Sh. '000'          | Secured creditors   |            |                   |
| 4,100              | Preferential creditors                                    |            | <u>(356)</u>      |
| 398                |   |            | 44,321.5          |
|                    | Bank overdraft secured by floating charge                 |            | <u>(22,790.0)</u> |
| 22,790             |   |            | 21,531.5          |
|                    | Unsecured creditors                                       | 20,900     |                   |
| 20,900             | Trade creditors   | 243        |                   |
| 201                | Contingent liability                                      | <u>108</u> | <u>(21,251)</u>   |
| <u>108</u>         | <u>Estimated Surplus as regards creditors</u>             |            | 280.5             |
| <u>48,497</u>      |   |            |                   |
|                    | Issued and called up capital 800,000 shares of Sh.20 each |            | <u>18,000</u>     |
|                    |   |            | <u>17,719.5</u>   |
|                    | Estimated deficiency as regards members                   |            |                   |

| DEFICIENCY ACCOUNT  |          |          |
|---|----------|----------|
|   | Sh.'000' | Sh.'000' |
| Net trading losses for the three years ended 30 <sup>th</sup> November 2003 after charging: |          | (12,900) |
| Depreciation  | 2,380    |          |
| Debenture interest  | 600      |          |

| DEFICIENCY ACCOUNT                                       |              |                  |
|--|--------------|------------------|
|  | Sh.'000'     | Sh.'000'         |
| Directors' remuneration                                  | <u>1,800</u> |                  |
| Estimated losses now written off:                        |              |                  |
| Goodwill   | 2,689        |                  |
| Debtors  | 410          |                  |
| Stock  | 420          |                  |
| Plant and machinery                                      | 620          |                  |
| Legal claim  | 108          |                  |
| Calls in arrears not receivable (20,000 X sh.7.50 X 75%) | 112.5        |                  |
|  | <u>460</u>   | <u>(4,819.5)</u> |
| Freehold property  |              | <u>17,719.5</u>  |

#### Preferential creditors

|                                     | Sh 000     |
|-------------------------------------|------------|
| Customs and Excise tax              | 200        |
| Managers salary ( max imum amount)  | 4          |
| Wages of 3 workment ( max 3 X 4000) | 12         |
| Rates                               | 20         |
| Taxes                               | <u>120</u> |
|                                     | <u>356</u> |

#### Example 2

Filisika Ltd. is insolvent and is in process of filing for relief under the provisions of the Bankruptcy Act. The company has no cash and its balance sheet currently shows creditors of Sh.48 million. An additional Sh.8 million is owed in connection with various expenses but these amounts have not yet been recorded. The company's assets with an indication of both book value and anticipated net realizable value as at 30 September 1999 as follows:

|                          | Book Value            | Expected NRV          |
|--------------------------|-----------------------|-----------------------|
|                          | Sh. '000'             | Sh. '000'             |
| Land                     | 80,000                | 75,000                |
| Buildings                | 90,000                | 60,000                |
| Accumulated depreciation | (38,000)              | -                     |
| Equipment                | 110,000               | 20,000                |
| Accumulated depreciation | (61,000)              | -                     |
| Investments              | 10,000                | 18,000                |
| Stocks                   | 48,000                | 36,000                |
| Debtors                  | 31,000                | 9,000                 |
| Other assets             | <u>5,000</u>          | <u>-</u>              |
|                          | <b><u>275,000</u></b> | <b><u>218,000</u></b> |

#### **Additional information:**

1. Filisika Ltd. has three debentures payable, each with a difference maturity date:

- Debentures one due in 5 years – Sh.120 million, secured by a mortgage lien on Filisika's land and buildings.
- Debenture two due in 8 years – Sh.30 million secured by Filisika's investments.
- Debenture three due in 10 years – Sh.35 million, unsecured.

2. Of the creditors owed by Filisika Ltd. Sh.10 million represents salaries to employees. However, no individual is entitled to receive more than Sh.4,000. An additional Sh.3 million is included in this liability item that is due to the Kenya Government in connection with taxes.

3. The shareholders equity balance reported by the company at the current date is Sh.42 million: composed of ordinary share capital of Sh.140 million and a deficit of Sh.98 million.

4. If the company is liquidated, administrative expenses of approximately Sh.20 million would be incurred.

#### **Required:**

A statement of affairs and deficiency or surplus account for Filisika Ltd. to indicate the expected availability of funds if the company is liquidated as at 30 September 1999.

#### **Solution**

#### **FILISIKA LTD**

### Unpledged assets

|                  | Sh.'000' |
|------------------|----------|
| Unpledged Assets | 20,000   |
| Equipment        | 3,600    |
| Stock            | 9,000    |
| Debtors          | —        |
| Others           | 65,000   |

### Pledged Assets

| Assets                    | NRV            | Liability      | Surplus       | Deficit       |               |
|---------------------------|----------------|----------------|---------------|---------------|---------------|
| Land & buildings          | 135,000        | 120,000        | 15,000        | -             |               |
| Investments               | <u>18,000</u>  | <u>30,000</u>  | —             | <u>12,000</u> |               |
|                           | <u>153,000</u> | <u>150,000</u> | <u>15,000</u> | <u>12,000</u> | <u>15,000</u> |
| Surplus on pledged assets |                |                |               |               | 80,000        |

### Total assets for creditors and members

| Gross Assets | Sh.'000'       |
|--------------|----------------|
| Pledged      | 153,000        |
| Unpledged    | <u>65,000</u>  |
|              | <u>218,000</u> |

| Gross liabilities | Liabilities                   |                |
|-------------------|-------------------------------|----------------|
| 150,000           | Secured creditors             |                |
|                   | <u>Preferential creditors</u> |                |
| 20,000            | Administrative expenses       | (20,000)       |
| 10,000            | Salaries to employees         | (10,000)       |
| 3,000             | Government taxes              | <u>(3,000)</u> |
|                   |                               | 47,000         |
|                   | <u>Unsecured creditors</u>    |                |

|              |  |               |                  |
|--------------|--|---------------|------------------|
| 35,000       | Creditors                                  | 35,000        |                  |
| 35,000       | Debentures                                 | 35,000        |                  |
| <u>8,000</u> | Accrued expenses                           | 8,000         |                  |
| 261,000      | Deficit on secured creditors               | <u>12,000</u> | <u>(90,000)</u>  |
|              | Deficiency to unsecured creditors          |               | (43,000)         |
|              | Ordinary share capital                     |               | <u>(140,000)</u> |
|              | Estimated deficiency as regards to members |               | <u>183,000</u>   |

**RE: FILISIKA LTD**

**DEFICIENCY A/C FOR THE YEAR ENDED 30.09.99**

|   | Sh.'000'     | Sh.'000'        |
|---|--------------|-----------------|
| Items contributory to deficiency        |              |                 |
| Accumulated trading losses              |              | (98,000)        |
| Omitted accrued expenses                |              | (8,000)         |
| Administrative expenses                 |              | <u>(20,000)</u> |
|   |              | (126,000)       |
| <u>Estimated losses on realization</u>  |              |                 |
| Land                                    | 50,000       |                 |
| Equipment                               | 29,000       |                 |
| Stock                                   | 12,000       |                 |
| Debtors                                 | 22,000       |                 |
| Other assets                            | <u>5,000</u> | <u>(73,000)</u> |
|   |              | (199,000)       |
| <u>Items reducing deficiency</u>        |              |                 |
| <u>Estimated surplus on realization</u> |              |                 |
| Buildings                               | 8,000        |                 |
| Investments                             | <u>8,000</u> | <u>16,000</u>   |
| Deficiency as per SOA                   |              | 183,000         |

**Pro-Forma Statement of Assets and Liabilities (For use in members' voluntary liquidation)**

| STATEMENT OF ASSETS AND LIABILITIES                 |  |    |
|---|--|----|
|   | Estimated to realize or<br>to rank for payment |    |
| <b><u>Assets</u></b>                                |  | Sh |
| Balance at bank                                     |  | xx |
| Marketable securities                               |  | xx |
| Trade debtors                                       |  | xx |
| Stocks and work-in-progress                         |  | xx |
| Freehold and leasehold property                     |  | xx |
| Plant and machinery                                 |  | xx |
|   |  | xx |
| <b><u>Liabilities</u></b>                           |  |    |
| Secured on specific assets                          | xx   |    |
| Secured by a floating charge                        | xx   |    |
| Estimated costs of liquidation                      | xx   |    |
|   | xx   |    |
| Unsecured creditors                                 | xx   |    |
| Bills payable and other liabilities                 | xx   | xx |
| <b>ESTIMATED SURPLUS AFTER PAYING DEBTS IN FULL</b> |  | xx |
|   |  |    |

## RECEIPTS AND PAYMENTS ACCOUNTS

This is a straight forward receipts and payments account but does not necessarily deal only with cash since the receiver may receive stocks, shares etc in satisfaction for company assets he has sold, and distribute these.

| RECEIVER'S RECEIPTS AND PAYMENTS ACCOUNT |     |                                   |     |
|--|-----|-----------------------------------|-----|
|  | Shs |                                   | Shs |
| Bank balance taken over                  | xx  | Cost of realizations              | xx  |
| Sales of pledged assets                  | xx  | Receiver's remuneration           | xx  |
|  |     | Preferential creditors (where the |     |

|    |                                   |    |
|----|-----------------------------------|----|
|    | Secured creditors are secured     |    |
|    | By a floating charge)*            | xx |
|    | Creditors secured by the pledged  |    |
|    | Assets (Fixed charge) taken over  | xx |
|    | Balance transferred to liquidator | xx |
| xx |                                   | xx |
|    |                                   |    |

| LIQUIDATOR'S RECEIPTS AND PAYMENTS ACCOUNT |     |                                   |     |
|--|-----|-----------------------------------|-----|
|  | Shs |                                   | Shs |
| Balance from receiver                      | xx  | Cost of liquidation               | xx  |
| Sales of assets                            | xx  | Liquidator's remuneration:        |     |
| Calls on shareholders                      | xx  | - % of amounts realized on sale   |     |
|  |     | of assets                         | xx  |
|  |     | - % of distribution to unsecured  |     |
|  |     | creditors and members             | xx  |
|  |     | Preferential creditors (if unpaid |     |
|  |     | by receiver)*                     | xx  |
|  |     | Unsecured creditors               | xx  |
|  |     | Preference shareholders           | xx  |
|  |     | Ordinary shareholders             | xx  |
|  | xx  |                                   | xx  |
|  |     |                                   |     |

\*If the receiver was appointed by creditors secured by a floating charge, he must settle preferential creditors before paying such secured creditors.

If the receiver was appointed by creditors secured by a fixed charge, he will directly settle the creditors who appointed him – and therefore preferential creditors must be paid by the liquidator (if liquidation is to take place).

The receivers' and liquidators receipt and payments can be presented in vertical formats.



**Example**

(a) List and explain briefly the powers of liquidator (5 marks)

(b) Hasara Ltd makes its accounts each year 31 October and has been trading at a loss. On 31 October 2002, a resolution for a voluntary liquidation was passed. The balance sheet as at that date was as follows.

|   | Sh. '000'  | Sh. '000'       | Sh. '000'     |
|---|------------|-----------------|---------------|
| <b>Non Current assets</b>   |            |                 |               |
| Freehold property   |            |                 | 11,000        |
| Plant and machinery   |            |                 | <u>2,750</u>  |
|   |            |                 | 13,750        |
| <b>Current assets:</b>  |            |                 |               |
| Stock   |            | 8,750           |               |
| Debtors   |            | 13,375          |               |
| Cash  |            | <u>125</u>      |               |
|   |            | 22,250          |               |
| <b>Current liabilities:</b>                                       |            |                 |               |
| Bank overdraft  | 3,750      |                 |               |
| Creditors   | 11,250     |                 |               |
| Interest payable (5% debentures)                                  | <u>500</u> | <u>(15,500)</u> | <u>6,750</u>  |
|   |            |                 | <u>20,500</u> |
| <b>Paid up capital:</b>   |            |                 |               |
| 10,000 10% cumulative preference shares of Sh.500 each fully paid |            |                 | 5,000         |
| 25,000 Ordinary shares of Sh.500 each fully paid                  |            |                 | <u>12,500</u> |
| 10,000 Ordinary shares of Sh.500 each. Sh.250 paid.               |            |                 | <u>2,500</u>  |
|   |            |                 | 20,000        |
| Revenue reserves: profit and loss account                         |            |                 | (9,500)       |
| <b>Non Current liabilities:</b>                                   |            |                 | <u>10,000</u> |
| 5% debentures   |            |                 | <u>20,500</u> |

**Additional information:**

1. The debentures are secured by a floating charge on the asset and undertaking of the company.
2. The bank overdraft is secured by a fixed charge on the company's freehold property.
3. The preference shares carry a right to a fixed cumulative dividend of 10% per annum up to the date of liquidation and a repayment of Sh.500 per share in priority to all other classes of shares. No dividend has been paid on the preference shares for two years.
4. The creditors include:

|   | Sh. '000' |
|---|-----------|
| Directors fees for one year             | 1,000     |
| Rates for six months to 31 October 2002 | 125       |
| Manager's salary for October 2002       |           |
| Wages for 15 employees                  |           |
| Pay As You Earn (PAYE)                  |           |

5. The assets realized the following amounts

|                     |        |
|---------------------|--------|
| Freehold property   | 12,500 |
| Plant and machinery | 2,000  |
| Stock               | 6,250  |
| Debtors             | 12,250 |

6. The expenses of liquidation amount to Sh.125,000 and the liquidator's remuneration was fixed at Sh.500,000.

**Required:**

The liquidator's statement of account showing in order of priority, the payments made and the computation of any calls to be made.

## **Solution**

### **(a) Powers of a liquidator**

Under section 241 of the Companies Act the liquidator has some powers some of which are exercisable with the consent of the court or a committee of inspection while others are exercisable without consent.

#### **Powers exercisable with consent**

- To blame or defend any action or other legal proceedings in the name and on behalf of the company.
- To carry on the business of the company in so far as may be necessary for beneficial winding up.
- To appoint an advocate to assist in the performance of his duties
- To pay any class of creditors in full
- To make any compromises or arrangement with creditors
- To compromise all calls, liabilities to calls debts. And other liabilities.

#### **Powers exercisable without consent**

- To sell any movable or immovable properties of the company
- To execute deeds and other documents in the name of the company and on its behalf
- To prove rank and claim in the bankruptcy or insolvency of a contributory
- To draw, accept or endorse any of exchange, a promissory note in the name of a company.
- Raise money on the security of the company's assets
- Appoint an agent to do business which he can not do himself
- Do all such other things as are necessary for the winding up of a company and distributing its assets.

(b)

**Hasara Ltd**

#### **Liquidators Statement of Account**

| Sh. | Sh. |
|-----|-----|
|-----|-----|

|  |               |                                      |               |
|--|---------------|--------------------------------------|---------------|
|  |               | Cost & charges (W2)                  | 625           |
| <b><u>Sales of pledged assets</u></b>  |               | Preferential creditors (W1)          | 504           |
| Freehold property                      | 12,500        | Floating charge – Debentures         | 10,000        |
| Bank overdraft                         | (3,750)       | - Interest                           | 500           |
|  |               |                                      | 10,500        |
| <b><u>Sale of unpledged assets</u></b> |               | Unsecured creditors (11,250 – 540)   | 10,746        |
| Plant and machinery                    | 2,000         | Preferential share holders:          | 5,000         |
| Stock                                  | 6,250         | Capital                              | 1,000         |
| Debtors                                | 12,250        | Dividend                             | 6,000         |
| Cash                                   | 125           | (10% x 5000 x 2)                     | <u>2,500</u>  |
| Calls made (150 x 10,000) (W3)         | <u>1,500</u>  | Ordinary shareholders (25,000 x 100) |               |
|  | <u>30,875</u> |                                      | <u>30,875</u> |

## WORKINGS

|    |                                |            |
|----|--------------------------------|------------|
| 1. | <b>Preferential creditors:</b> |            |
|    | Rates 6 months to 31.10.02     | 125        |
|    | Managers salary (max)          | <u>4</u>   |
|    |                                | 129        |
|    | Wages for 15 employees         | 50         |
|    | PAYE                           | <u>325</u> |
|    |                                | <u>504</u> |
| 2. | <b>Cost &amp; charges:</b>     | 125        |
|    | Liquidation expenses           | <u>500</u> |
|    | Liquidator's remuneration      | <u>625</u> |

|    |   |
|----|---|
| 3. | <b>Determination of calls</b> (if 1,000 |
|----|---|

|                               |                    |
|-------------------------------|--------------------|
| any)                          | <u>2,500</u>       |
| Calls available               | <u>3,500</u>       |
| Notional calls (250 x 10,000) | 35                 |
|                               | <u>3,500</u> = 100 |
| No. of shares (25 + 10)       | 35                 |
| Notional distribution         | 250 – 100 = 150    |
| Calls made                    |                    |

### Example 2

Nagala supermarket Ltd. deals in imported goods which are paid for in foreign exchange. Following the recent depreciation of the Kenyan shilling the company has incurred exchange losses on trade debtors and its business has become generally uncompetitive and consequently forcing the company into a voluntary liquidation on 1 November 1997:

As at 1 November 1997:

1. The company had a bank loan of Sh.625,000 which was secured on furniture and fittings. The furniture and fittings realised Sh.1,000,000.
2. Assets not specifically pledged realised Sh.4,250,000.
3. Liquidation expenses amounted to Sh.187,500.
4. Salaries payable to messengers for the last three months amounted to Sh.22,500, Sh.60,000 was four months salary payable to clerks.
5. Unsecured trade creditors were Sh.1,092,500.
6. The share capital comprised of 10,000 8% preference shares of Sh.100 each and 25,000 ordinary shares of Sh.100 each.
7. Calls in arrears were: Sh.25 on 10,000 ordinary shares  
: Sh.40 on 8,000 ordinary shares  
: Sh.50 on 7,000 ordinary shares

**Required:**

The liquidator's statement of receipts and payments with the appropriate support schedule (15 marks)

**Solution**

| <b>RE: Nagala Supermarket Ltd</b><br><b>Liquidators statement of receipts and payments</b> |                  |                              |                  |
|--|------------------|------------------------------|------------------|
|  | Shs.             |                              | Shs.             |
| Proceeds from sale of furniture  |                  | Expenses of liquidation      | 187,500          |
| And fittings   | 1,000,000        |                              |                  |
| Repayment of bank loan   | (625,000)        | Preferential creditors paid  |                  |
|  |                  | Salaries to messengers       | 22,500           |
| Proceeds from sale of assets   |                  | Salaries to clerks           | 60,000           |
| Not specifically pledged   | 4,250,000        |                              |                  |
|  |                  | Unsecured creditors Paid     |                  |
|  |                  | Trade creditors              | 1,092,500        |
|  |                  | Share capital repaid         |                  |
|  |                  | Preference shareholders      | 1,000,000        |
|  |                  | Ordinary shareholders        | 1,580,000        |
|  |                  |                              | 2,580,000        |
|  |                  | Dividend to ord shareholders | 682,500          |
|  | <u>4,625,000</u> |                              | <u>4,625,000</u> |

## Schedule of repayments to shareholders

|                  | Issued<br>Surplus<br>S capital<br>Per Sha<br>Shs | Paid up<br>Div<br>S capital<br>Shs | Calls in<br>Arrears<br>Shs | Gross<br>Rep.<br>Shs | Net<br>Rep<br>Shs | Shs.             |
|------------------|--|------------------------------------|----------------------------|----------------------|-------------------|------------------|
| 8% pref.S cap    | 1,000,000  | 1,000,000                          |                            | 1,000,000            | 1,000,000         | -                |
| -                |  |                                    |                            |                      |                   |                  |
| 10000 Ord Sh     | 1,000,000  | 750,000                            | 250,000                    | 1,000,000            |                   | 750,000          |
|                  | 323,972  | 32.40                              |                            |                      |                   |                  |
| 8000 Ord Sh      | 800,000  | 480,000                            | 320,000                    | 800,000              |                   | 480,000          |
|                  | 207,342  | 25.90                              |                            |                      |                   |                  |
| 7000 Ord. Sh     | <u>700,000</u>                                   | <u>350,000</u>                     | <u>350,000</u>             | <u>700,000</u>       |                   | <u>350,000</u>   |
|                  | <u>151,186</u>                                   | <u>21.60</u>                       |                            |                      |                   |                  |
|                  | <u>3,500,000</u>                                 | <u>2,580,000</u>                   | <u>920,000</u>             | <u>3,500,000</u>     |                   | <u>2,580,000</u> |
|                  | <u>682,500</u>                                   | <u>N/A</u>                         |                            |                      |                   |                  |
| Available cash   |  |                                    | <u>3,262,500</u>           |                      |                   |                  |
| Total repayments |  |                                    | <u>4,182,500</u>           |                      |                   |                  |

### notes:

- 1) Since the total repayments Sh4182500) is in excess of the issued share capital sh3500000) the issued share capital may be returned in full to the shareholders, less of course, any calls expected from them. This meant a return to shareholders of Shs2580000. The surplus of Sh682500 Sh3262500 – Sh2580000) is given only to the ordinary shareholders as a dividend.
- 2) It is assumed that all the messengers and clerks are owed a maximum of Sh4000 per person per month.

3) It is also assumed that the preference dividends are paid up to date and the company's articles of association are based on Table A i.e dividends payable to shareholders is based on paid up share capital and not issued share capital.

OSC 1<sup>st</sup> lot):  $750000/1580000 \times 682500 = 323972$

OSC 2<sup>nd</sup> lot):  $480000/1580000 \times 682500 = 207342$

OSC 3<sup>rd</sup> lot):  $350000/1580000 \times 682500 = 151185$